89-1824

No. _____

Supreme Court, U.S.
FILED
MAY 22 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

October Term, 1989

LAURA J. HARMATH,
Petitioner,

vs.

GEORGE GOLER, M.D., *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Ohio

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QUESTION PRESENTED FOR REVIEW

The rights under Ohio Constitution, Article I, Section 2, and Section 16 are denied when a woman exercises her right to an elective abortion which is negligently performed resulting in the birth of a healthy child and her claim against the physician who negligently performed the elective abortion for child rearing expenses is denied.

PARTIES BELOW

The parties below include Laura Harmath, a single unwed 20 year old high school graduate.

Dr. George Goler, a Board Certified Obstetrician-Gynecologist who negligently performed an elective abortion on Laura Harmath on September 12, 1985, which negligence resulted in the birth of a child, Jason Harmath. Dr. Goler's professional corporation Beachwood OB/GYN, Inc., was also made a party Defendant in this case.

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No. _____

IN THE

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October Term, 1989

LAURA J. HARMATH,
Petitioner,

v.

GEORGE GOLER, M.D., *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI
To the Ohio Supreme Court

CITATION TO OPINION BELOW

The citation to the decision of the Ohio Supreme Court is:

Harmath v. Goler (1990), 49 Ohio St. 3d 62, set forth in the Appendix at p. A1.

The decision of the Cuyahoga County Court of Appeals Eighth District is unreported and is set forth in the Appendix at p. A2.

The written decision of the Cuyahoga County Court of Common Pleas dismissing Respondents' claims is set forth in the Appendix at p. A5.

JURISDICTIONAL STATEMENT

Petitioner Laura Harmath prays that a Writ for Certiorari issue to review the judgment of the Ohio Supreme Court entered on February 21, 1990 which affirmed the judgment of the Court of Appeals which affirmed a Motion to Dismiss the Petitioner's Complaint ordered by the trial court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 2 of the Ohio Constitution:

§2 Right to alter, reform, or abolish government, and repeal special privileges.

All political power is inherent in the people, Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly. (See Const 1802, Art VIII, §1.)

Article I, Section 16 of the Ohio Constitution:

§16 [Redress in courts.]

All courts shall be open, and every person for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

Ohio Rules of Civil Procedures 12(B)(6):

RULE 12. Defenses and objections—when and how presented—by pleading or motion—motion for judgment on the pleadings

* * * * *

(B) How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3)

improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19 or Rule 19.1. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. When a motion to dismiss for failure to state a claim upon which relief can be granted presents matters outside the pleading and such matters are not excluded by the court, the motion shall be treated as a motion for summary judgment and disposed of as provided in Rule 56. Provided, however, that the court shall consider only such matters outside the pleadings as are specifically enumerated in Rule 56. All parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56.

STATEMENT OF THE CASE

A. Summary of Procedural History

This case concerns a medical negligence action based on a negligently performed abortion that resulted in the birth of a child.

In 1985 the Petitioner Laura Harmath, hereinafter called "Petitioner" was a twenty year old single, pregnant woman. On September 12, 1985 she went to Mt. Sinai Medical Center for an elective abortion, to be performed by the Respondent, Dr. George Goler. On March 31, 1986, six months after this procedure Miss Harmath gave birth to a baby boy.

The Petitioner commenced a medical negligence action against Dr. George Goler on September 3, 1987. The basis of her claim was that the Respondent negligently performed the elective abortion which resulted in the birth of a child. Her single element of damage was the economic cost of rearing the child.

> As a result of the negligence and unskillfullness of the Defendants, Plaintiff, Laura J. Harmath has incurred the responsibility and economic expenses of raising said baby boy until eighteen years of age, including food, clothing, and shelter, education, medical expenses and other necessities of life.

At the trial level, the Respondents filed a Motion to Dismiss Petitioner's claim as not valid under Ohio law. On November 9, 1987, trial court granted Respondents Motion to Dismiss.

The Petitioner filed her timely Notice of Appeal with the Court of Appeals, Cuyahoga County, Ohio, Eighth Judicial District on November 12, 1987.

On December 22, 1988, while Respondents appeal to the Court of Appeals of the Eighth District was pending, the Eighth District Court of Appeals in a unanimous decision affirmed the judgment of the trial court, in finding in favor of the Respondents. The Court of Appeals relied on *Johnson v. University Hospitals of Cleveland*, and stated that child rearing expenses were not recoverable:

> Recovery of these costs, and therefore a damage award constitutes a windfall to the parents. The benefits of child rearing are too speculative and, therefore, are impossible to weigh against the cost of child rearing. Furthermore, a contrary result would encourage the emotional and psychological upheaval which may occur to the child if he/she later learns of parental rejection before birth, ie., being born as a result of an unwanted pregnancy.

Petitioner filed her timely Notice of Appeal with this Court on January 10, 1989 and jurisdiction was granted.

On February 21, 1990 the Ohio Supreme Court dismissed Petitioner's appeal based on the case of *Johnson v. University Hospitals of Cleveland*, which was decided during the pending of Petitioner's appeal in the Ohio Supreme Court.

REASONS FOR GRANTING THE WRIT

The denial of Petitioner's claim for child rearing expenses which were imposed on her without her consent violates the Equal Protection clauses of the Ohio Constitution Article 1, Section 2, and the United States Constitution, and the Ohio Constitution Open Courts Amendment Article 1, Section 16.

In Ohio child rearing costs are recoverable in cases resulting from negligently performed sterilization procedures and Petitioner's claim for child rearing expenses resulting from a negligently performed abortion should likewise be a compensable claim.

Under the principles of *Bowman v. Davis*, 48 Ohio St. 2d 41 (1975), child rearing costs are recoverable in the case at bar. In *Bowman* this Court held that a negligently performed sterilization procedure is a traditional negligence action. Further, this Court went on to say that an action for damages for a negligent sterilization procedure was not against public policy.

Mrs. Bowman a mother of four children, underwent a tubal ligation or sterilization procedure in an attempt to avoid any further pregnancies. The tubal ligation was performed by the Defendant Dr. Davis. Ten months after the sterilization procedure, Mrs. Bowman gave birth to twins, one of whom suffered from a congenital abnormality and the other twin was normal and healthy.

Mr. and Mrs. Bowman instituted a medical negligence action against the doctor who performed the tubal ligation seeking four basic types of damages:

1. expenses of or stemming from "the foreseeable consequences of this operation" (these include such "physical complications" and "pain and suffering" as the operation "was designed to prevent");

2. the value of Mrs. Bowman's "society, comfort care and protection" (including consortium) lost to "other members of the family" during and after her "confinement for the birth of the twins");

3. expenses due to "the change in the family status," (including extra money to compensate for the fact that Mrs. Bowman "must spread her society, comfort, care, protection and support over a large group" and extra money to "replenish the family exchequer so that the new arrivals will not deprive other members of the family");

4. economic costs of "rearing" the twins (including, in the case of the abnormal twin, the costs of "institutionalization, care, nursing," and "special attention").

The case was submitted to the jury and a general verdict was returned in the amount of Four Hundred and Sixty-Two Thousand Five Hundred Dollars ($462,500.00). The Court of Appeals affirmed this judgment and it was appealed to the Ohio Supreme Court who affirmed the Court of Appeals.

In its analysis this Court refused to label Mrs. Bowman's claim a "wrongful life" claim or anything other than what it was, a negligence claim:

> . . . Much of appellant's argument is irrelevant. This is not a suit for "wrongful life," which asks the jury to measure damages on the relative merits of being versus non-being. It is, instead a *traditional negligence action.* At the trial, appellees asserted that the appellant was negligent during and after the tubal ligation, that this negligence was the

> proximate cause of the birth of the twins, and that the negligence cost the family the expenses of childbirth and rearing." [emphasis added]

Bowman at p. 45.

The present is not a case of "wrongful life" which is defined as an action brought by a neurologically or congenitally damaged child seeking damages against a physician for negligently permitting his own birth as a deformed child.

The second mandate of *Bowman* is that an action for damages based on a negligently performed sterilization is not against public policy. A specific assignment of error as to whether the damages should be limited to only the expenses of pregnancy was not presented at the appellate level (See footnote #1, *Bowman* at p. 44). However, the Court had before it Assignment of Error #2 which was whether public policy barred the recovery of damages following an unsuccessful sterilization. Also before the Court was the issue that child rearing expenses were an element of damage sought by Mrs. Bowman and submitted to the jury. If the Supreme Court felt that child rearing expenses should not be recoverable or were against public policy they had an opportunity to address that issue through Assignment of Error #2, but this Court in *Bowman* did not choose to do so.

In following *Bowman's* mandate, that a negligently performed sterilization is a traditional tort action and then applying those damages allowable in a negligence claim ie., those that flow directly and proximately from the negligent act, child rearing expenses are a proper element of damage and are recoverable.

Like Mrs. Bowman's cause of action, the Petitioner's action is one of medical negligence and her claim for damages are those that flow from that negligent act. But unlike Mrs. Bowman the Petitioner's cause of action was not recognized as a negligence action by the Court of Appeals and she was denied the recovery of child rearing expenses.

In the case at bar, the Court of Appeals in affirming the trial court's denial of child rearing expenses relied on *Johnson v. University Hospitals of Cleveland* (January 14, 1988), Ohio Appellate No. 53192, Ohio Supreme Court No. 88-485. The Court of Appeals stated:

> Recovery of these costs, and therefore a damage award constitutes a windfall to the parents. The benefits of child rearing are too speculative and, therefore, are impossible to weigh against the cost of child rearing. Furthermore, a contrary result would encourage the emotional and psychological upheaval which may occur to the child if he/she later learns of parental rejection before birth, ie., being born as a result of an unwanted pregnancy.

Johnson ignores the law as set forth in *Bowman* and should not be followed. In the first instance, the Court of Appeals labeled Mrs. Johnson's action based on a negligently performed sterilization, a "wrongful life" action. This totally contradicts the statement in *Bowman* which states that a negligently performed sterilization is a traditional negligence action. *Bowman* at page 45.

The emotional characterization of the present case as a "wrongful life" case adds nothing to the required legal analysis except to interject a moral issue into a traditional negligence case. This attempt to rename an old and established tort, is an attempt to deny damages in an effort by the Respondent to avoid full responsibility for his negligence.

The *Johnson* Court went further and set forth the rationale that birth is a "windfall to the parent and therefore a benefit." To deny Petitioner full recovery by saying as a matter of law that an "unplanned" child is a windfall and benefit to the mother is the ultimate presumptive judicial act. For the Court to ignore a woman's right to choose, when she wishes to begin her family and how large her family must be, regardless of her financial ability to pay the cost of raising a child, is wrong.

For the Courts to create new "benefits" theory for victims of negligence is improper and dangerous. Should we decree that the victim of a breached real estate transaction not be entitled to damages because he has received the "benefit" of a mortgage-free existence? Do we want to say as a matter of law that a negligent doctor whose surgery has caused the death of an elderly patient has bestowed a "benefit" on the patient's family who now does not have to care for and financially support the patient?

Furthermore, to say birth is always a "benefit" to everyone contradicts approved state and national public policies of contraception, abortion and sterilization.

The cases of *Troppi v. Scarf,* 41 Mich. App. 240, 187 N.E.2d 511 (1971); *Sherlock v. Stillwater,* 260 N.W.2d 196 (Minn. 1971); *Ochs v. Borrelli,* 187 Conn. 253, 445 A.2d 883 (1982); and the dissent in *Johnson,* are hereinafter cited to support Petitioner's proposition of law that child rearing expenses are recoverable. However, Petitioner disagrees with the benefit set-off holding in these cases cited, and relies on *Bowman v. Davis, supra* to resist the benefit set-off argument.

Troppi v. Scarf, supra, addresses this argument that a child is always a benefit. In *Troppi* child rearing expenses were recoverable where a pharmacist negligently filled a contraceptive prescription. The Court stated:

> Contraceptives are used to prevent the birth of healthy children. To say that for reasons of public policy contraceptive failure can result in no damage as a matter of law ignores the fact that tens of millions of persons use contraceptives daily to avoid the very result which the defendant says is always a benefit, never a detriment. Those tens of millions of persons, by their conduct, express the sense of the community.

Troppi at p. 517.

Johnson also held that the benefits of child rearing are too speculative and therefore are impossible to weigh against the cost of child rearing. Such a claim of speculation ignores the fact that the Petitioner is seeking compensation for a provable financial burden, a burden she sought to avoid by terminating her pregnancy.

Petitioner's economist calculated the child rearing cost to Miss Harmath at One Hundred and Three Thousand Dollars ($103,000.00). This cost is based on nationally recognized standards published by the Department of Labor and other government organizations. These goverment standards are used in courtrooms throughout the country to prove future lost wages, future medical care, rates of inflation, etc. To claim child rearing costs are speculative is to ignore these economic facts.

Also to say as a matter of law that the benefits of child rearing outweigh the financial costs ignores the fact that no amount of love or affection will eliminate the heavy financial burden forced upon the Petitioner.

The Court of Appeals opinion in *Johnson* condemns Laura Harmath to a financial burden that she could not afford and belittles her legitimate, lawful reason for delaying raising a family until she can financially afford to do so. Why should society and the welfare system pay the cost of child rearing while the cause of these expenses, the negligent Respondent, hides behind the "wrongful life" label?

Judge Markus in his dissent in *Johnson v. University Hospitals of Cleveland* carefully addressed this benefit issue:

> The defendants argue that the value of a child necessarily outweighs the cost of that child's support. As a conceptual generality, the *Bowman* decision rejects such a "notion of public policy". As a factual matter, that statement may well describe some family circumstances but not others. For example, a family with minimal resources may have less ability to enjoy the benefits that a new child brings. Indeed, such a family might seek a sterilization procedure because the family anticipates that the economic burden of a new child will outweigh the unquestionable benefits. Absent a legislative resolution of this issue, we should not decide with a wide sweeping generalization that the benefit always outweighs the cost.

Other Courts in finding that child rearing expenses are recoverable have addressed this benefit argument. The Supreme Court of Minnesota in *Sherlock v. Stillwater, supra*, stated:

> Although public sentiment may recognize that the vast majority of parents, the long term and enduring benefits of parenthood outweigh the economic costs of rearing a healthy child, it would

> be simply *myopic* to declare today that those benefits exceed the cost as a matter of law. [emphasis added]

Sherlock at p. 175.

The Supreme Court of Connecticut in *Ochs v. Borrelli, supra*, in affirming costs of child rearing stated:

> . . . Raising a child from birth to maturity is a costly enterprise, and hence, injurious although it is an experience that abundantly recompenses most parents with intangible rewards. There can be no affront to public policy in our recognition of these costs and no inconsistency in our view that parental pleasures soften but do not eradicate economic reality.

Ochs at p. 886.

In the present case, the Court of Appeals other reason for denying Harmath child rearing costs was:

> To allow such cost will encourage the emotional and psychological upheaval which may occur to the child if he/she later learns of parental rejection before birth.

This argument is unfounded and should not be a reason for the denial of child rearing costs.

Judge Markus, in the dissent in *Johnson*, addressed this issue:

> Finally, the resulting stigma is not significantly different than when the court permits damages for the cost of support, or limits recovery to damages directly incident to the pregnancy. In either case, the plaintiff publicly announces that this was an unintended or unwanted child. *Bowman* unequivocally established that Ohio permits recovery for the damages directly attributable to the unwanted pregnancy.

> The Defendants argue that the parent may deprecate the child's value in seeking to reduce the offset for the related benefit. However, any resulting stress, if the child later learns about such testimony, may be less than the child's stress in maturing without adequate financial support.

This "stigma" of the child learning that there was a case pursued by his mother could be avoided by the case being filed under the name of Jane Doe.

In addition, the weighing and balancing of the possible adverse reaction of the child learning that his birth was undesired is not a test that should be performed by the judiciary. The weighing of these interests should be done by the parents. Adoptive parents have always weighed these interests when deciding whether to tell their child that he is adopted and parents have done so successfully without judicial interference or condemnation.

The Court in *Bowman* in holding that Mrs. Bowman's action for damages was not against public policy, reaffirmed the fundamental right to privacy ie., the choice to procreate. The Court reasoned that to deny a cause of action for damages based on this right to privacy would be an "impermissible infringement" of a Constitutional right:

> It is the opinion of this court that the cause of action pursued successful by the Bowmans at the trial and appellant level is not barred by notions of public policy. The choice not to procreate, as part of one's right to privacy has become (subject to certain limitations) a Constitutional guarantee. See *Griswold v. Connecticut* (1965), 381 U.S. 479; *Roe v. Wade* (1973), 410 U.S. 113; and *Doe v. Bolton* (1973), 410 U.S. 179. For this court to endorse a policy that makes physicians liable for the foreseeable

> consequences of all negligently performed operations except those involving sterilization would constitute an impermissible infringement of a fundamental right.

To recognize a right but to deny a full remedy for violation of the right is to not recognize the right at all.

Both Petitioner Miss Harmath and Mrs. Bowman attempted to exercise their right to privacy, Mrs. Bowman sought to avoid childbirth permanently by having a tubal ligation and Miss Harmath sought to avoid a single pregnancy by terminating it through an abortion. But as a result of the Respondents' negligence they were prevented from exercising their right and a full remedy should be available to Laura Harmath.

Bowman is clear in its refusal to limit the liability of physicians who perform negligent sterilization operations:

> For this court to endorse a policy that makes physicians liability for the foreseeable consequences of all negligently performed operations except those involving sterilization would constitute impermissible infringement of a fundamental right.

Bowman at p. 46.

To limit doctors liability for a major element of the damage they cause would have the effect of giving them immunity.

The case of *Schork v. Huber*, 48 S.W.2d 861 (Ky. 1983) is instructive in this regard. The better reasoned opinion, the dissent by Justice Leibson, stated:

> In our world, there are so many businesses and professions whose negligent acts can cause great harm and damage. They are still held accountable in terms of civil liability. Airplanes loaded with

> passengers crash in midair. An overhang walkway collapses to the floor in a crowded hotel lobby. A defective product, or chemical spill, causes serious injuries or death to a vast number of people. Continued availability of traditional tort remedies protect the victims in cases much more burdensome than the present one and continue to provide incentive for reasonable care. We cannot absolve a physician of liability for the expenses reasonably foreseeable for the cost of raising a child simply because it may be burdensome. To do so is to limit the action to a relatively insignificant portion of the damages caused by his negligence. The physician who undertakes to provide medical treatment in the form of sterilization should not be afforded immunity from the major consequences of his negligence.

Id., at 867.

There exists no legislative grant of immunity to physicians who perform these operations and there should be no judicial grant of such immunity from full responsibility for all the damages that result from their negligence.

Finally, to single out one class of injured persons ie., those who have sterilization or abortion procedures, and to deny them a complete recovery for all the damages that they have suffered is discriminatory and a denial of Due Process and Equal Protection guaranteed by the Ohio and United States Constitution. Nor can recovery of child rearing expenses be dependent upon whether the child born is healthy or not. Regardless of the health of the child the mother's financial responsibilty for food, clothing, education, shelter exists to the age of eighteen (18).

CONCLUSION

For the Ohio Supreme Court to deny child rearing expenses to Petitioner is to punish her by saddling her with a financial burden she lawfully sought to avoid, but which was forced upon her by the Respondent's negligence. Therefore to exert the economic pressure of child rearing costs, for exercising a legitimate recognized right is coercion, which should never be condoned in Ohio. Denying child rearing expenses to the Petitioner would have the effect of granting the Respondent a windfall by allowing him to escape full financial responsibility for his negligence.

Miss Harmath, in choosing to have an abortion, made the choice to delay raising a family until the time her employment, career, marital status and financial and emotional stability were all in place. The choice she made to delay having a family and exercising control over her life was denied by the Respondent's negligence.

For these reasons, Petitioner requests this Honorable Court to grant her writ.

Respectfully submitted,

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APPENDIX

DECISION OF THE SUPREME COURT OF OHIO

(Decided February 21, 1990)

No. 89-97

THE SUPREME COURT OF OHIO
COLUMBUS

LAURA J. HARMATH,
Appellant,

vs.

GEORGE GOLER, M.D., *et al.*,
Appellee.

[Cite as Harmath *v.* Goler (1990), 49 Ohio St. 3d 62.]

Medical malpractice—"Wrongful pregnancy" (failed abortion) action—"Limited damages" rule applicable to birth of normal, healthy child.

(No. 89-97—Submitted January 24, 1990—Decided February 21, 1990.)

APPEAL from the Court of Appeals for Cuyahoga County, No. 54811.

Don C. Iler Co., L.P.A., Don C. Iler and *Nancy C. Iler,* for appellant.

Jacobson, Maynard, Tuschman & Kalur Co., L.P.A., Susan M. Reinker and *Janis L. Small,* for appellees.

This cause is affirmed on authority of *Johnson v. University Hospitals of Cleveland* (1989), 44 Ohio St. 3d 49, 540 N.E. 2d 1370.

MOYER, *C.J.*, SWEENEY, HOLMES, DOUGLAS, WRIGHT and RESNICK, *JJ.*, concur.

H. BROWN, *J.*, dissents.

JOURNAL ENTRY AND OPINION OF THE COURT OF APPEALS OF CUYAHOGA COUNTY, OHIO

(Decided December 22, 1988)

No. 54811

COURT OF APPEALS OF OHIO,
EIGHTH DISTRICT
COUNTY OF CUYAHOGA

LAURA J. HARMATH,
Plaintiff-Appellant,

vs.

GEORGE GOLER, M.D., *et al.*,
Defendants-Appellees.

JOURNAL ENTRY AND OPINION

CHARACTER OF PROCEEDING: Civil appeal from Common Pleas Court, No. 135,453.

JUDGMENT: Affirmed.

DAVID T. MATIA, *P.J.*:

Plaintiff-appellant, Laura J. Harmath, appeals from the Cuyahoga County Court of Common Pleas' decision to grant defendant-appellee, George Goler, M.D.'s motion to dismiss pursuant to Civ. R. 12(B)(6) for failure to state a claim upon which relief may be granted. Appellee performed an unsuccessful abortion on appellant in September 1985.

In March 1986 appellant gave birth to an apparently healthy baby boy. Appellant sues in negligence for the cost of raising her child to the age of majority.

Appellant's sole assignment of error contends that:

"THE TRIAL COURT ERRED IN DISMISSING PLAINTIFF'S CAUSE OF ACTION FOR CHILD REARING EXPENSES CAUSED BY THE DEFENDANT'S MEDICAL NEGLIGENCE."

In *Johnson v. University Hospitals of Cleveland* (Jan. 14, 1988), Cuyahoga App. No. 53192, unreported, this court held that in cases such as that *sub judice*, the expenses incurred in raising a healthy child are not recoverable:

> "Recovery of these costs, and therefore a damage award constitutes a windfall to the parents. The benefits of child rearing are too speculative and, therefore, are impossible to weigh against the cost of child rearing. Furthermore, a contrary result would encourage the emotional and psychological upheaval which may occur to the child if he/she later learns of parental rejection before birth, i.e., being born as a result of an unwanted pregnancy."

Thus, the trial court did not err in granting appellee's motion to dismiss since appellant can prove no set of facts entitling her to recovery and, therefore, fails to state a claim upon which relief may be granted. *O'Brien v. University Community Tenants Union* (1975), 42 Ohio St. 2d 242. For this reason, appellant's assignment of error is not well taken.

Judgment affirmed.

It is ordered that appellees recover of appellant their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

DYKE, *J.*, and
NAHRA, *J.*, concur.

/s/ DAVID T. MATIA
Presiding Judge

N.B. This entry is made pursuant to the third sentence of Rule 22(D), Ohio Rules of Appellate Procedure. This is an announcement of decision (see Rule 26). Ten (10) days from the date hereof this document will be stamped to indicate journalization, at which time it will become the judgment and order of the court and time period for review will begin to run.

A5

JOURNAL ENTRY OF THE COURT OF COMMON PLEAS

(Dated November 6, 1987)

No. 135453

IN THE COURT OF COMMON PLEAS

LAURA HARMATH,
Plaintiff,

vs.

GEORGE GOLER, M.D., *et al.*,
Defendant.

Defendant's Motion to Dismiss is Granted.

MICHAEL J. CORRIGAN
Judge